CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 33 SEPTEMBER 22, 1999 NO. 38

This issue contains:

U.S. Customs Service

General Notices

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

The decisions, rulings, regulations, notices and abstracts which are published in the CUSTOMS BULLETIN are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Office of Finance, Logistics Division, National Support Services Center, Washington, DC 20229, of any such errors in order that corrections may be made before the bound volumes are published.

Please visit the U.S. Customs Web at:
http://www.customs.gov

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402

U.S. Customs Service

General Notices

COPYRIGHT, TRADEMARK, AND TRADE NAME RECORDATIONS

(No. 8–1999)

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of July 1999 follow. The last notice was published in the CUSTOMS BULLETIN on August 4, 1999.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building, 3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Caridad Berdut, Acting Chief, Intellectual Property Rights Branch, (202) 927–2330.

Dated: September 8, 1999.

CARIDAD BERDUT,
Acting Chief,
Intellectual Property Rights Branch.

The list of recordations follow:

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK		OWNER NAME	RES
COP9900168	19990702	20190702	TAE BO VIDEO SLEEVE COLLECTION		SHAPE THE FUTURE INTERNATIONAL	N
COP9900169	19990707	20190707	BVLGARI CATALOG "SOLOTEMPO - THE ESSENTIAL ELEGANCE		BULGARI S.P.A.	N
COP9900170	19990707	20190707	BVLGARI HOLIDAY CATALOG 1996/97		BULGARI S.P.A.	N
COP9900171	19990707	20190707	PETITS ET MAMANS LINE - PACKAGING FOR BODY LOTION AND		BULGARI S.P.A.	N
COP9900172	19990707	20190707	BVLGARI CATALOG 1998 - *WATCHES*		BULGARI S.P.A.	N
COP9900173	19990708	20190708	STAR WARS: EPISODE 1 - THE PHANTOM MENACE		LUCASFILM LTD.	N
COP9900174	19990709	20190709	TY INC. BUTCH		TY INC.	N
COP9900175	19990709	20190709	TY INC. EGGBERT		TY INC.	N
COP9900176	19990709	20190709	TY INC. EWEY		TY INC.	N
COP9900177	19990709	20190709	TY INC. GOATEE		TY INC.	N
COP9900178	19990712	20190712	TY INC. GOOCHY		TY INC.	N
COP9900179	19990712	20190712	TY INC. LUKE		TY INC.	N
COP9900180	19990712	20190712	TY INC. MAC		TY INC.	N
COP9900181	19990712	20190712	TY INC. MOOCH		TY INC.	N
COP9900182	19990712	20190712	TY INC. PRICKLES		TY INC.	N
COP9900183	19990712	20190712	TY INC. SCAT		TY INC.	N
COP9900184	19990712	20190712	TY INC. SLIPPERY		TY INC.	N
COP9900185	19990712	20190712	TY INC. STILTS		TY INC.	N
COP9900186	19990712	20190712	TY INC. TINY		TY INC.	N
COP9900187	19990714	20190714	SABAN'S PRINCESS SISSI STYLE GUIDE		SABAN ENTERTAINMENT INC.	N
COP9900188	19990720	20180720	CACTUS MARGARITA		NOVELTY CRYSTAL CORPORATION	N
COP9900189	19990720	20190720	POCKET MONSTERS POSTER		NINTENDO OF AMERICA INC.	N
COP9900190	19990720	20180720	NEW STAR CHRISTMAS LIGHTS 1998 (4 DESIGNS)		NEW STAR TOYS & GIFTS, INC.	N
COP9900191	19990721	20190721	JUST LIKE MOM		WALTER FRENCH HORTON	N
COP9900192	19990726	20190726	GAME BOY POCKET		NINTENDO OF AMERICA INC.	N
COP9900193	19990727	20190727	GAME BOY POCKET		NINTENDO OF AMERICA INC.	N
COP9900194	19990727	20190727	TAE BO BASIC		SHAPE THE FUTURE INTERNATIONAL	N
COP9900195	19990729	20190729	TREE OF LIFE		JACOB AND ALEX ROSENTHAL	N
SUBTOTAL RECORDATION TYPE		28				
TMK9900268	19990719	20081215	SENSORY MARK - NO DRAWING		EDGAR RICE BURROUGHS, INC.	N
TMK9900286	19990702	20081215	LASER BROOM		UVTECH SYSTEMS INC.	N
TMK9900287	19990702	20070311	TAE BO		BG STAR PRODUCTIONS	N
TMK9900288	19990702	20060910	KENNETH COLE NEW YORK	SERVICE MARK	K.C.P.L. INC.	N
TMK9900289	19990702	20080830	UNLISTED		K.C.P.L. INC.	N
TMK9900290	19990702	20070603	KENNETH COLE REACTION		K.C.P.L. INC.	N
TMK9900291	19990702	20060806	KENNETH COLE REACTION		K.C.P.L. INC.	N
TMK9900292	19990702	20040621	UNLISTED		K.C.P.L. INC.	N
TMK9900293	19990702	20080331	ZAIKA		ZAIKA FOODS INC.	N
TMK9900294	19990707	20081208	PLASTICS AUXILIARIES		TIDEWATER PUBLICATION SERVICES,	N
TMK9900295	19990708	20030629	VITTORIA		VITTORIA NORTH AMERICA, L.L.C.	N
TMK9900296	19990708	20030915	TWO CLOSELY SPACED NARROW WHITE BANDS APPEARING NEAR		ESTWING MANUFACTURING CO.	N
TMK9900297	19990708	20081212	DESIGN OF AN ALLIGATOR		LACOSTE ALLIGATOR	N
TMK9900298	19990708	20090119	FLEXILIGHT		WIDE LOYAL INDUSTRIES LIMITED	N
TMK9900299	19990708	20051205	NITREX		THE DELTA GROUP	Y
TMK9900300	19990708	20070623	CONFIGURATION OF A PORTION OF THE HEAD AND NECK		ESTWING MANUFACTURING CO.	N
TMK9900301	19990708	20070701	NY & CO. (AND DESIGN)		LERNER NEW YORK, INC.	N
TMK9900302	19990708	20081124	WHITE CAMELLIA		ST. JOHN KNITS, INC.	N

REC NUMBER	EFF DT	EXP DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK9900303	19990708	20090703	KENWORTH	PACCAR INC.	N
TMK9900304	19990708	20081124	ECONO-CARGO	AMERICA'S BODY COMPANY INC.	N
TMK9900305	19990714	20081228	ENVIRO-BLOCK	TIRE RESOURCE SYSTEMS INC.	N
TMK9900306	19990720	20080331	JOSE L. PIEDRA	JOSE L. PIEDRA	N
TMK9900307	19990720	20080113	PADRON FABRICA DE TABACOS FUNDADA EN 1964 DESIGN	PILOTO CIGARS, INC.	N
TMK9900308	19990720	20080127	PADRON 1964 1964 ANNIVERSARIO SERIE AND DESIGN	PILOTO CIGARS, INC.	N
TMK9900309	19990720	20030608	PADRON CIGARS HAND MADE PPPP MIAMI, FLA AND DESIGN	PILOTO CIGARS, INC.	N
TMK9900310	19990720	20090705	ZODIAC	GENENDER INTERNATIONAL, INC.	N
TMK9900311	19990721	20080324	THE UPSIDE DOWN WOODS	ADAMS GOLF IP, L.P.	Y
TMK9900312	19990721	20070715	ADAMS AND DESIGN	ADAMS GOLF IP, L.P.	Y
TMK9900313	19990721	20031221	ASSAULT	ADAMS GOLF IP, L.P.	Y
TMK9900314	19990721	20090102	RONALD MCDONALD	MCDONALD'S CORPORATION	N
TMK9900315	19990721	20020630	TANG DESIGN	TANG HOI KEE TRADING CO.	N
TMK9900316	19990721	20020609	TANG HOI KEE	TANG HOI KEE TRADING CO.	N
TMK9900317	19990721	20050912	TANG HOI KEE AND DESIGN	TANG HOI KEE TRADING CO.	N
TMK9900318	19990727	20070625	OLYMPUS	OLYMPUS OPTICAL CO., LTD.	N
TMK9900319	19990729	20080915	IMMEDIATE MATTE	ESTEE LAUDER INC.	N
TMK9900320	19990729	20080915	IMMEDIATE GLOW	ESTEE LAUDER INC.	N
TMK9900321	19990729	20080804	GO BRONZE	ESTEE LAUDER INC.	N
TMK9900322	19990729	20080908	FLIRT	ESTEE LAUDER INC.	N
TMK9900323	19990729	20081208	EXACT COLOR	ESTEE LAUDER INC.	N
TMK9900324	19990729	20080728	DOUBLE WEAR	ESTEE LAUDER INC.	N
TMK9900325	19990729	20090323	DIMINISH	ESTEE LAUDER INC.	N
TMK9900326	19990729	20081013	CAMOUFLAGE	ESTEE LAUDER INC.	N
TMK9900327	19990729	20090209	BI-COLOR	ESTEE LAUDER INC.	N
TMK9900328	19990729	20080804	PX	ESTEE LAUDER INC.	N
TMK9900329	19990729	20081103	POWDER PLAY	ESTEE LAUDER INC.	N
TMK9900330	19990729	20090403	MINUTE MAKEUP	ESTEE LAUDER INC.	N
TMK9900331	19990729	20090126	LIPZONE	ESTEE LAUDER INC.	N
TMK9900332	19990729	20090504	LAVISH	ESTEE LAUDER INC.	N
TMK9900333	19990729	20080922	LAUDER PLEASURES FOR MEN (DESIGN)	ESTEE LAUDER INC.	N
TMK9900334	19990729	20080811	INTENSIVE LIFTING SERIES	ESTEE LAUDER INC.	N
TMK9900335	19990729	20080804	INTENSIVE LIFTING CREME	ESTEE LAUDER INC.	N
TMK9900336	19990729	20090504	U-TURN	ARAMIS INC.	N
TMK9900337	19990729	20080922	CLINIQUE HAPPY	CLINIQUE LABORATORIES INC.	N

SUBTOTAL RECORDATION TYPE 53

TOTAL RECORDATIONS ADDED THIS MONTH 81

PROPOSED COLLECTION; COMMENT REQUEST

CUSTOMS MODERNIZATION ACT RECORDKEEPING REQUIREMENTS

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Customs Modernization Act Recordkeeping Requirements. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Customs Modernization Act Recordkeeping Requirements
OMB Number: 1515–0214
Form Number: N/A

Abstract: This information and records keeping requirement is required to allow Customs to verify the accuracy of the claims made on the entry documents regarding the tariff status of imported merchandise, admissibility, classification/nomenclature, value and rate of duty applicable to the entered goods.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Businesses, Individuals, Institutions
Estimated Number of Respondents: 5,750
Estimated Time Per Respondent: 127 hours
Estimated Total Annual Burden Hours: 732,600
Estimated Total Annualized Cost on the Public: N/A

Dated: August 30, 1999.

J. EDGAR NICHOLS,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, September 3, 1999 (64 FR 48455)]

PROPOSED COLLECTION; COMMENT REQUEST

NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA) REGULATIONS AND CERTIFICATE OF ORIGIN

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the NAFTA Regulations and Certificate of Origin. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: NAFTA Regulations and Certificate of Origin

OMB Number: 1515–0204

Form Number: Customs Form 434 and 446

Abstract: The objectives of NAFTA are to eliminate barriers to trade in goods and services between the United States, Mexico, and Canada; facilitate conditions of fair competition within the free trade area; liberalize significantly conditions for investments within the free trade area; establish effective procedures for the joint administration of the NAFTA; and the resolution of disputes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions

Estimated Number of Respondents: 1,155

Estimated Time Per Respondent: 10 minutes

Estimated Total Annual Burden Hours: 2,694

Estimated Total Annualized Cost on the Public: $43,100

Dated: August 30, 1999.

J. EDGAR NICHOLS,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, September 3, 1999 (64 FR 48456)]

PROPOSED COLLECTION; COMMENT REQUEST

GENERAL DECLARATION (OUTWARD/INWARD)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the General Declaration (Outward/Inward). This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: General Declaration (Outward/Inward)

OMB Number: 1515–0002

Form Number: Customs Form 7507

Abstract: Customs Form 7507 allows the agent or pilot to make entry or exit of the aircraft, as required by statute. The form is used to docu-

ment clearance by the arriving aircraft at the required inspectional facilities and inspections by appropriate regulatory agency staffs.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)
Affected Public: Business or other for-profit institutions
Estimated Number of Respondents: 500
Estimated Time Per Respondent: 5 minutes
Estimated Total Annual Burden Hours: 154,668
Estimated Total Annualized Cost on the Public: $1,874,250

Dated: August 30, 1999.

J. EDGAR NICHOLS,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, September 3, 1999 (64 FR 48455)]

PROPOSED COLLECTION; COMMENT REQUEST

TRANSPORTATION MANIFEST (CARGO DECLARATION)

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, Customs invites the general public and other Federal agencies to comment on an information collection requirement concerning the Air Cargo Manifest. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)).

DATES: Written comments should be received on or before November 2, 1999, to be assured of consideration.

ADDRESS: Direct all written comments to U.S. Customs Service, Information Services Group, Room 3.2.C, 1300 Pennsylvania Avenue, NW, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to U.S. Customs Service, Attn.: J. Edgar Nichols, Room 3.2.C, 1300 Pennsylvania Avenue NW, Washington, D.C. 20229, Tel. (202) 927–1426.

SUPPLEMENTARY INFORMATION:

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pur-

suant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) the annual costs burden to respondents or record keepers from the collection of information (a total capital/startup costs and operations and maintenance costs). The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Transportation Manifest

OMB Number: 1515–0001

Form Number: Customs Forms 1302, 1302A, 7509, and 7533C

Abstract: Transportation Manifest (Cargo Declarations) are essential to Customs for the control of cargo and for pre-arrival targeting of shipments for enforcement examination purposes.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change)

Affected Public: Business or other for-profit institutions and individuals

Estimated Number of Respondents: 26,800

Estimated Time Per Respondent: 34 minutes

Estimated Total Annual Burden Hours: 154,668

Estimated Total Annualized Cost on the Public: $109,920

Dated: August 30, 1999.

J. EDGAR NICHOLS,
Agency Clearance Officer,
Information Services Branch.

[Published in the Federal Register, September 3, 1999 (64 FR 48456)]

DEPARTMENT OF THE TREASURY,
OFFICE OF THE COMMISSIONER OF CUSTOMS,
Washington, DC, September 8, 1999.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs Service field offices to merit publication in the CUSTOMS BULLETIN.

STUART P. SEIDEL,
Assistant Commissioner,
Office of Regulations and Rulings.

PROPOSED MODIFICATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF HANGAR BOLTS

AGENCY: U.S. Customs Service; Department of the Treasury.

ACTION: Notice of proposed modification of tariff classification ruling letter and treatment relating to the classification of hangar bolts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of hangar bolts. Similarly, Customs proposes to revoke any treatment previously accorded by it to substantially identical transactions. Comments are invited on the correctness of the intended actions.

DATE: Comments must be received on or before October 22, 1999.

ADDRESS: Written comments (preferably in triplicate) are to be addressed to: U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Submitted comments may be inspected at the same location during regular business hours.

FOR FURTHER INFORMATION CONTACT: Andrew M. Langreich, General Classification Branch: (202) 927–2318.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to modify a ruling relating to the tariff classification of hangar bolts. Although in this notice Customs is specifically referring to New York Ruling Letter (NY) 827966, dated March 14, 1988, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importers or their agents for importations of merchandise subsequent to this notice.

In NY 827966, Customs classified hangar bolts in subheading 7318.15.20, HTSUS, which provides for bolts and bolts and their nuts or washers entered or exported in the same shipment, other. In NY 827966 we reasoned that the hangar bolt should be classified according

to its *eo nomine* definition and in compliance with court decisions rendered under the prior tariff schedule, the Tariff Schedules of the United States (TSUS). The HTSUS superseded the TSUS in 1989 and in the subsequent years, Customs and the courts have adopted and established criteria to be utilized in the classification of fasteners. Accordingly, we intend to modify NY 827966. NY 827966 is set forth as "Attachment A" to this document.

It is now Customs position that this merchandise is classifiable under subheading 7318.15.50, HTSUS, which provides for studs. Proposed HQ 962616 modifying NY 827966 is set forth as "Attachment B" to this document.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to modify NY 827966, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed HQ 962616. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 7, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
New York, NY, March 14, 1988.

CLA-2-44:S:N:N1:230 827966
Category: Classification
Tariff No. 4409.10.5000,
7318.15.2090, and 7318.22.0000

MS. DIANE EMBRY
CARGO BROKERS INTERNATIONAL, INC.
P.O. Box 82640
Hapeville, GA 30354

Re: The tariff classification of a hand rail section from Taiwan.

DEAR MS. EMBRY:

This is in response to your request for a tariff classification ruling dated January 22, 1988, on behalf of Stair Parts, Ltd. of Roswell, Georgia.

A sample of a nine inch curved section of a hand rail was submitted. It is made from glued up red oak, which is cut into an arch shaped piece of wood and then molded into a hand rail pattern. It is not further finished. Separate hanger bolts, nuts, and washers of steel were also submitted.

The Harmonized Tariff Schedule of the United States (HTS) is scheduled to replace the Tariff Schedules of the United States (TSUS) in 1988. Public notice of the exact date will be given.

The applicable HTS subheading for the curved hand rail section will be 4409.10.5000, which provides for wood moldings, other than standard. The duty rate will be 4.5 percent ad valorem.

The applicable HTS subheading for the hanger bolts and nuts will be 7318.15.20, which provides for threaded articles; other screws and bolts, whether or not with their nuts or washers (of iron or steel). The duty rate will be 0.7 percent ad valorem.

The applicable HTS subheading for the washers will be 7318.22.0000, which provides for non-threaded articles; other washers (of iron or steel), and which is free of duty.

This classification represents the present position of the Customs Service regarding the dutiable status of the merchandise under the HTS. If there are changes before enactment this advice my not continue to be applicable.

Until the HTS is implemented, the applicable TSUS item number for the curved hand rail section is 202.6600, which provides for wood moldings, other than standard. The rate of duty is 4.5 percent ad valorem.

The applicable TSUS item number for the hanger bolts and nuts 646.5400, which provides for bolts and bolts and their nuts imported in the same shipment (of iron or steel). The rate of duty is 0.7 percent ad valorem.

The applicable TSUS item number for the washers is 646.7000, which provides for other washers (of iron or steel), and which is free of duty.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed at the time this merchandise is imported. If the documents have already been filed, this ruling should be brought to the attention of the Customs officer handling the transaction.

MAX G. WILLIS,
Area Director,
New York Seaport.

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC.

CLA–2 RR:CR:GC 962616 AML
Category: Classification
Tariff No. 7318.15.50

MS. DIANE EMBREY
CARGO BROKERS INTERNATIONAL, INC.
P.O. Box 82640
Hapeville, GA 30354

Re: Modification of NY 827966; hangar bolt; studs.

DEAR MS. EMBREY:

This is in regard to New York Ruling Letter (NY) 827966, issued to you on behalf of Stair Parts, Ltd., of Roswell, Georgia, by the Customs National Commodity Specialist Division, New York, on March 14, 1988. In that ruling, a hangar bolt, among other articles not relevant herein, was classified under subheading 7318.15.20, Harmonized Tariff Schedule of the United States (HTSUS), which provides for bolts and bolts and their nuts or washers entered or exported in the same shipment, other. Photocopies of the article were forwarded for our examination. We have reviewed the classification of the item and determined that it is incorrect. This ruling sets forth the correct classification.

Facts:

The item is a hangar bolt made of base metal. It is a singular rod which is threaded at both ends. One end has a wood screw thread and the other end is threaded with a machine screw thread for receiving a nut. The center portion of the article is unthreaded. The wood screw end is driven into a ceiling or wall and another article, *i.e.*, a nut, hook or other article with machine screwed threads is fastened to the protruding end.

Issue:

Whether the article should be classified under subheading 7318.15.20, HTSUS, as a bolt; subheading 7318.15.50, HTSUS, as a stud; subheading 7318.15.60, HTSUS, as a screw; or 7318.19.00, HTSUS, as an other threaded article?

Law and Analysis:

Classification of imported merchandise is accomplished pursuant to the Harmonized Tariff Schedule of the United States (HTSUS). Classification under the HTSUS is guided by the General Rules of Interpretation of the Harmonized System (GRIs). GRI 1, HTSUS, states in part that "for legal purposes, classification shall be determined according to the terms of the headings and any relative section or chapter notes[.]"

The HTSUS heading and subheadings under consideration are as follows:

7318	Screws, bolts, nuts, coach screws, screw hooks, rivets, cotters, cotter pins, washers (including spring washers) and similar articles, of iron or steel:						
	Threaded articles:						
7318.15	Other screws and bolts, whether or not with their nuts or washers:						
7318.15.20	Bolts and bolts and their nuts or washers entered or exported in the same shipment						
*	*	*	*	*	*	*	
7318.15.50	Studs.						
7318.15.60	Other.						
*	*	*	*	*	*	*	
7318.19.00	Other.						

In NY 827966, Customs classified hangar bolts in subheading 7318.15.20, HTSUS, reasoning that the hangar bolt should be classified according to its *eo nomine* definition and in compliance with court decisions rendered under the Tariff Schedules of the United States (TSUS). The HTSUS superseded the TSUS in 1989 and in the subsequent years, Customs and the courts have adopted and established criteria to be utilized in the classification of fasteners. Accordingly, NY 827966 must be modified as it relates to the classification of hangar bolts.

When interpreting and implementing the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, while neither legally binding nor dispositive, provide a guiding commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUS. Customs believes the ENs should always be consulted. See, T.D. 89–90, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In the absence of a recognized industry standard, Customs traditionally classifies fasteners in accordance with their primary design characteristics. This classification criteria is reinforced by an American National Standards Institute (ANSI) specifications which establish a recommended procedure for determining the identity of externally threaded fasteners. See HQ 951362, dated June 24, 1992. ANSI describes bolts and screws as follows:

> [a] bolt is an externally threaded fastener designed for insertion through holes in assembled parts, and is normally intended to be tightened or released by torquing a nut.
>
> A screw is an externally threaded fastener capable of being inserted into holes in assembled parts, of mating with a preformed internal thread or forming its own thread, and of being tightened or released by torquing the head.
>
> A bolt is designed for assembly with a nut. A screw has features in its design which makes it capable of being used in a tapped or other preformed hole in the work. Because of the basic design, it is possible to use certain types of screws in combination with a nut. Any externally threaded fastener which has a majority of the design characteristics which assist its proper use in a tapped or other preformed hole is a screw, regardless of how it is used in its service application. ANSI/ASME (American Society of Mechanical Engineers) B 18.2.1 (1981).

A stud, on the other hand, is a type of bolt, but is distinguished from a bolt by its intended service application. Studs are normally short rods or pins threaded on one or both ends, sometimes with heads on one end to allow them to be fixed in place resulting in a protuberance to which other articles may be suspended or attached by a nut or other means. While not necessarily encompassing the entire universe of fasteners that may be studs, Customs regards as studs articles that are within this definition, as cited in *Fastening Devices, Inc. v.*

United States, 40 Cust. Ct. 345, C.D. 2004 (1958). See also, in regard to fasteners under consideration, EN 73.18 and *S.I. Stud, Inc. v. United States*, 17 CIT 661, *aff'd*, 24 F.3rd 1394 (1994); and *Hafele America Co., Ltd. v. United States*, 870 F. Supp. 352, 18 CIT 1096 (1994)(in which the Court of International Trade adopted the ANSI definition of "screws" for classification purposes).

The subject item does not meet the definition of a bolt because it is not designed to be tightened or loosened by torquing a nut, or necessarily to be used with a nut. It cannot be classified as a screw because it does not mate with a preformed internal thread or form its own thread. However, the item does qualify as a stud, since it is capable of housing or supporting another object designed to be fastened to the protruding end.

Holding:

The hangar bolts are classified under subheading 7318.15.50, HTSUS, which provides for studs.

Effect on Other Rulings:

NY 827966 is modified as set forth in this ruling.

JOHN DURANT,
Director,
Commercial Rulings Division.

MODIFICATION AND REVOCATION OF CUSTOMS RULINGS LETTERS AND PRIOR CUSTOMS TREATMENT PERTAINING TO THE ACCEPTABILITY OF CUSTOMS BROKERS USING THE SERVICES OF EMPLOYEE LEASING COMPANIES

ACTION: Notice of modification and revocation of ruling letters and prior Customs treatment.

SUMMARY: Pursuant to section 625(c)(1) and (2), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)(2)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying or revoking ruling letters and prior Customs treatment pertaining to the use by customs brokers of the services of employee leasing companies. It is now Customs position that under certain circumstances the leasing of employees to brokers will not result in a violation of 19 U.S.C. §§1641(b)(1) or (b)(4).

EFFECTIVE DATE: This notice is effective November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gina Grier, Entry Procedures and Carriers Branch, Office of Regulations and Rulings, 202–927–2397.

SUPPLEMENTARY INFORMATION:

BACKGROUND

An "employee leasing company" is an entity which, pursuant to a written contract, assumes the responsibility for a client company's workers. The employee leasing company then leases those workers

back to the client company to do the client company's work. Employers use employee leasing companies primarily to shift the burden of administrative functions onto another party and to take advantage of lower insurance and benefits rates realized by employee leasing companies.

Customs has previously examined the use of employee leasing companies by licensed customs brokers. In Headquarters ruling letter (HRL) 113867, dated March 19, 1997, it was determined that such use would violate sections 641(b)(1) and (b)(4) of the Tariff Act of 1930, as amended (19 U.S.C. §§1641(b)(1) and (b)(4)). Section 641(b)(1) requires a person to have a broker's license in order to transact customs business for others. The ruling reasoned that an employee leasing company's status as a co-employer of persons who perform customs business for a broker would require the leasing company also to become licensed. The failure to obtain a license would be a violation of the statute. Section 641(b)(4) imposes a duty on licensed brokers to exercise responsible supervision and control over their transaction of customs business. HRL 113867 concluded that the existence of a co-employer relationship between a broker and an employee leasing company would take away the degree of responsible supervision and control required of a broker. This rejection of the use of employee leasing companies in the customs broker environment was followed in HRL 114267, dated December 15, 1998. That ruling cited HRL 113867 as authority in reaffirming an earlier rejection of an employee leasing arrangement in HRL 226101, dated December 4, 1996.

Since the issuance of those rulings, Customs has received additional ruling requests asking for a reevaluation of our position on brokers and employee leasing companies. Recognizing the need for government to accommodate changing business practices, a proposal to modify our previous position was published on June 23, 1999, in the CUSTOMS BULLETIN, Volume 33, No. 25. Two comments were received.

One comment objected to the use of the term "supervision and control" in the proposed ruling, suggesting that Customs was trying to introduce a lesser standard for brokers in their oversight of leased employees. Such was not the agency's intent, as is evidenced by the use of the term "responsible supervision and control" in several places throughout the proposed ruling. However, to avoid any possible confusion, we have added the word "responsible" to several new areas in the text. The same comment suggests that the Customs regulations be amended to require brokers to disclose the use of leased employees to those importer clients on whose accounts the leased employees work. The justification given for this suggestion is that "it may not be in the importer's interest to have this fact hidden." Absent further elaboration on how this would impair an importer's interests, we decline to impose a new regulatory requirement at this time. The comment also asks where the line is drawn between the prohibition against "temporary" and permissible "leased" employment in the customs brokerage situation. Customs objection to the use of temporary workers in a broker's

customs business operations stems from the inherent incompatibility such an arrangement would have with existing requirements that a broker file a statement identifying employees who are authorized to handle customs business matters, and to promptly notify Customs of the withdrawal of such authority. The use of temporary workers in customs business operations would also, in our opinion, reduce a broker's ability to exercise responsible supervision and control over the customs business of the affected office. In contrast, it is contemplated that employees leased by a broker from an employee leasing company would be viewed as "permanent" employees, whose presence would be reported to Customs and who could be adequately trained in matters concerning customs laws and regulations. Finally, the comment requests a clarification of whether the leased employees would have access to the identity of the clients of the brokers and to their confidential files. We have added a sentence in the proposed ruling which indicates that such information will be available to leased employees; we also reiterate that disclosure to the employee leasing company would be improper.

The second comment suggests a correction to the citation of one of the cases discussed in the proposed ruling, and recommends inclusion of the fact that the case involved criminal complaints. We agree with these suggestions and have amended the proposed ruling accordingly.

Customs hereby revokes HRL 113867 (Attachment A), and modifies HRL's 226101 (Attachment B) and 114267 (Attachment C). HRL 114411, which presents Customs new position, is set forth as Attachment D to this document. Additionally, pursuant to 19 U.S.C. §1625(c)(2), Customs revokes any treatment previously accorded by Customs to substantially identical transactions.

Dated: September 1, 1999.

THOMAS L. LOBRED,
(for Sandra Bell, Director,
International Trade Compliance Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 1, 1999.

BRO-1-RR:IT:EC 114411 GG
Category: Brokers

RONALD W. GERDES, ESQ.
LARRY ORDET, ESQ.
SANDLER, TRAVIS & ROSENBERG, P.A.
THE WATERFORD
5200 Blue Lagoon Drive
Miami, FL 33126-2022

Re: Employee Leasing Company; Customs Brokers; Customs Business; Leasing Employees to Brokers; 19 U.S.C. §1641; HRL 113867 Revoked; HRL's 226101 and 114267 Modified.

DEAR MESSRS. GERDES AND ORDET:

This is in response to your letter, dated July 7, 1998, requesting a ruling on behalf of your client, Vincam Human Resources, Inc. ("Vincam"). Our decision follows.

Facts:

Vincam is a Professional Employer Organization ("PEO"), or "employee leasing company". Employee leasing companies allow client companies to out source the management of their human resources by creating a co-employment relationship with the client companies. In this particular arrangement, the client companies allocate certain employer functions to Vincam. Pursuant to its "Client Services & Co-Employment Agreement" ("the Agreement"), Vincam is responsible for: 1) the payment of wages; 2) collection and payment of employment-related taxes; 3) providing mandatory employee benefits, including worker's compensation; 4) providing voluntary employee benefits, such as health insurance; and 5) providing guidance on good management techniques and on compliance with various employment laws (e.g., immigration, ERISA, Family and Medical Leave Act, etc.). You refer to these responsibilities as "non-operational" concerns.

The client company, or worksite employer, supervises and directs the day-to-day operations of the business and business management issues, controls working conditions at the worksite, determines the place and length of the assignment of each employee, etc. The worksite employer is solely responsible for its business. You refer to these responsibilities as "operational" concerns.

The conversion process by which the client company's workforce transfers to Vincam is described in the Agreement as follows:

> Upon execution of the Agreement, Vincam undertakes the conversion process during which the parties mutually reach an agreement as to which of the Client Company's employees will be Worksite Employees. The parties agree that Vincam will not employ any Client Company employee who is not authorized to work by law. The Client Company agrees to transfer to Vincam's payroll all employees identified to become Worksite Employees provided each such employee accepts employment offered by Vincam. The Client Company retains the sole responsibility for any employee not chosen as a Worksite Employee if the person provides services to the Client Company at that worksite. The addition of Vincam as a co-employer is communicated in writing to the employees so that everyone has a clear understanding of the co-employment arrangement * * *.

Vincam has leased employees to clients in a variety of professional practice contexts, including law firms, financial institutions, dental offices, etc. You indicate that in those situations Vincam does not assume responsibility for the client's business and does not direct or supervise its daily operations. You also state that in many states, Vincam cannot, by statute, assume such responsibility, or direct or supervise any work at the worksite. That is done exclusively by the worksite employer. In essence, Vincam is the human resources department of its client.

You seek our opinion as to whether the co-employment relationship practiced by Vincam with customs brokers complies with the laws and regulations governing customs brokers. Specifically, you ask us to re-examine our previous determination, set forth in Headquar-

ters Ruling Letter (HRL) 113867, dated March 19, 1997, that such arrangements violate the applicable broker laws.

Issue:

Whether a customs broker may enter into a co-employment relationship with an employee leasing company.

Law and Analysis:

Section 641(b)(1) of the Tariff Act of 1930, as amended (19 U.S.C. §1641), provides that "[n]o person may conduct customs business (other than solely on behalf of that person) unless that person holds a valid customs broker's license issued by the Secretary [of the Treasury] * * *" The term "customs business" is defined in Section 641(a)(2) as:

> [T]hose activities involving transactions with the Customs Service concerning the entry and admissibility of merchandise, its classification and valuation, the payment of duties, taxes, or other charges assessed or collected by the Customs Service upon merchandise by reason of its importation, or the refund, rebate, or drawback thereof. It also includes the preparation of documents or forms in any format and the electronic transmission of documents, invoices, bills, or parts thereof, intended to be filed with the Customs Service in furtherance of such activities, whether or not signed or filed by the preparer, or activities relating to such preparation, but does not include the mere electronic transmission of data received for transmission to Customs.

Receipt of a broker's license confers on the broker the obligation to "exercise responsible supervision and control over the customs business that it conducts." (19 U.S.C. §1641(b)(5).)

As noted earlier, Customs has already examined the issue of brokers and their leasing of employees from employee leasing companies. In HRL 113867, Customs prohibited the practice on the grounds that: 1) the employee leasing company, because of its co-employer status, would be conducting customs business without a license; and 2) the broker client would lack the necessary responsible supervision and control over the shared employees. HRL 113867 was also recently cited and followed in HRL 114267, dated December 15, 1998. This ruling will reevaluate the conclusions reached in those two rulings.

The employees leased by Vincam to its broker clients will be engaged in customs business activities. The first question to be answered is whether Vincam's status as co-employer of those employees renders it, too, engaged in the transaction of customs business. An affirmative response could subject Vincam to the imposition of a monetary penalty for conducting customs business without a license. (19 U.S.C. §1641(b)(6) and 19 CFR §111.4).

The concept of employee leasing companies is fairly new. As such, very little case law as yet exists in this area. However, the Ohio Court of Appeals recently examined the issue of whether an employee leasing company, by reason of leasing employees to a licensed entity, is performing the work of the client company without a license. In *City of Columbus v. Tradesmen International, Inc.*, 1997 WL 52905 (Ohio App. 10 Dist.), the Ohio Court of Appeals reviewed a decision in which a municipality had filed two criminal complaints against an employee leasing company which leased skilled workers to the construction industry. The complaints alleged that the leasing company was performing electrical work without an electrical contractor's license or a construction permit in violation of city code. The court, basing its reasoning on the tort principle known as the "loaned servant doctrine", concluded that the client contractor company, not the employee leasing company, was performing the work for which a license and permit were required. The court noted that:

> Under the loaned servant doctrine, when one person lends his employee to another for a particular employment, the employee, for anything done in that employment must be dealt with as the employee of the one to whom he has been lent, although he remains the general employee of the one who lent him. *Halkias v. Wilkoff Co.* (1943), 141 Ohio St. 139, 47 N.E. 2d 199, paragraph 4 of the syllabus; *Baird v. Sickler* (1982), 69 Ohio St. 2d 652, 433 N.E. 2d 593. Furthermore it is of no legal import that the party who lent the employee continues to pay him as long as the borrowing party controls the employee as to the work performed * * *
>
> Here, the uncontroverted evidence is that the electrical workers leased from [the employee leasing company] were under the exclusive direction and control of [the client] while working on the [project], while [the employee leasing company] merely paid the workers' salaries and administered tax related matters. Thus, the work performed by the leased workers on the * * * project is properly imputable to [the client], rather than [the employee leasing company].

> Since [the employee leasing company] did not perform any electrical construction work or cause any such work to be performed, it was not required to obtain either a license under CC [Columbus City Code] 4114.01(A) or a permit under CC 4113.011(A).

Applied here, the conclusions reached in *City of Columbus* would argue for a determination that an employee leasing company does not require a broker's license to lease employees to a customs broker.

In your ruling request, you include a memorandum from the Federal Aviation Administration, dated March 13, 1996, as evidence that the use of employee leasing companies has been sanctioned in other areas regulated by the federal government. You state that "[t]he FAA permits a certified foreign air carrier to utilize the services of an employee leasing company, and permits those employees to utilize the benefit of free and reduced rate transportation accorded to airline employees." The memorandum supports your contention. We note that it also makes reference to a previous FAA decision allowing "certificated" (an FAA term of art) repair stations to use employees leased to them by employee leasing companies. We contacted the FAA to confirm that the opinions stated in the memorandum remain the position of that agency today. This was, indeed, verified. It was further explained that the air carriers and repair stations as well as their employees must become licensed, or certificated, by the FAA. The employee leasing company, however, does not have to obtain FAA certification.

After reviewing the judicial and administrative opinions on this matter, we conclude that an employee leasing company may lease employees to customs brokers without having to obtain its own broker's license.

The next issue is whether the employee leasing company arrangement enables the client broker to exercise the necessary responsible supervision and control over the customs business it conducts for others. The term "responsible supervision and control" is defined in 19 CFR §111.11(d) as:

> That degree of supervision and control necessary to ensure that the employee provides substantially the same quality of service in handling customs transactions that the licensed broker is required to provide. While the determination of what is necessary to maintain responsible supervision and control will vary depending upon the circumstances in each instance, factors which Customs will consider include, but are not limited to: The frequency of visits to offices of the licensee by the licensed broker(s); the training required of employees; the issuance of written instructions and guidelines to the employees; the volume and type of business of the licensee; the reject rate for the various customs transactions; the maintenance of current editions of the Customs Regulations, Harmonized Tariff Schedule of the United States, and Customs issuances; the availability of the licensed broker(s) for consultation with the employee(e) when necessary; the frequency of audits and reviews by the licensed broker(s) of the customs transactions handled by the employee(s); and any circumstance which indicates whether a licensed broker of the firm has a real interest in the firm's operations.

The central theme running through this definition is involvement in and monitoring of the customs business operations to ensure accuracy of work performed. It follows that adequate responsible supervision and control would be lacking if the use of an employee leasing company in some manner impeded or impaired a broker's ability to control its operations. In the broker context, this would occur if the leasing back of employees severed the employer-employee relationship previously existing between the broker and its employees.

In a *Position Statement on Relationships Between Customs Brokers*, published in the Federal Register on March 30, 1989 (54 FR 13136), Customs stated that "it is the position of the Customs Service that the requisite responsible supervision and control of all Customs transactions conducted by a broker for a client can be exercised only in an employee-broker relationship—and not in an independent contractor relationship." That document further stated that:

> Supervision and control in the employment context generally means the actual power to hire, fire and discipline. *N.L.R.B. v Security Guard Services, Inc.*, 384 F.2d.143, 147–249 (5th Cir. 1987). It refers to the acts of overseeing with direction or inspecting with authority. *Glenview Park Dist. V. Melhus*, 540 F. 2d. 1321, 1326 (7th Cir. 1976). An employee has been defined as a person who renders service to another for wages and who in the performance of such service is entirely subject to the direction and control of the employer. *Weaver v. Weinberger*, 392 F. Supp. 721, 723 (S.D. W. Va. 1975); *Beliz v.*

W.H. McLeod & Sons Packing Co., 765 F.2d. 1317, 1327–1330 (5th Cir. 1985); and *Sandwiches, Inc. V. Wendy's Intern., Inc.*, 654 F. Supp. 1066 (E.D. Wisc. 1987).

Thus, a customs broker could use the services of an employee leasing company if it retained sufficient control over both the employment and the work of its employees.

The issue of the existence or continuation of an employer-employee relationship when the employment arrangement includes the use of an employee leasing company has been explored by the courts. Except in cases where a statute specifically designates one party as the employer[1], the courts have applied the common law rule that the employer is the party who exercises control over the work performed by the leased employees. *See Professional & Executive Leasing, Inc. v. Commissioner*, 89 T.C. 225, 233 (1987), affd. 862 F.2d 751 (9th Cir. 1988); 88–2 U.S. Tax Cas. (CCH) P9622 (U.S. Ct. Appeals 9th Cir., 1988); *Clark Printing Company, Inc. v. Mississippi Employment Security Commission*, 681 So.2d 1328 (Sup.Ct. Miss. 1996). A review of the Agreement is necessary to see how this applies to Vincam's situation.

Paragraphs 3 and 6(i) of the Agreement address the supervision and control issue in the following manner:

> *Paragraph 3*
> With the creation of the co-employment arrangement, Vincam assumes employer's rights as to the Worksite Employees, including without limitation, the right to hire, fire, discipline, and pay wages. Although the Client Company no longer has sole employer rights, it retains the right to reject the assignment of any worker to its worksite by Vincam, provided that such rejection does not violate any law. *The Client Company retains such direction, supervision, and control over the Worksite Employees as is necessary to conduct its business on a day-to-day basis. Further, the Client Company retains full responsibility for its business, products, and services; the determination of the level of wages to be paid above the Fair Labor Standards Act (FLSA) minimum wage and salary requirements; worksite premises; and any third party, subcontractor, independent contractor or non-Worksite employee.* (Emphasis added)
>
> *Paragraph 6(i)*
> *The Client Company acknowledges that Vincam does not guarantee the Worksite Employees' performance because Vincam does not direct, supervise, or control the day-to-day operations of the Client Company's business. If any law requires a Worksite Employee to have or maintain a special license or be supervised by a Worksite Employee with such a license, the Client Company will ensure that the Worksite Employee is so licensed or supervised.* The Client Company will pay for the costs associated with obtaining such license. Further, because the Client Company controls its business affairs, it acknowledges that Vincam is not responsible for any loss of revenue, product, business, or injury to the Client Company or a third party due to any act or omission of a Worksite Employee. (Emphasis added)

These paragraphs indicate that the client companies have the ability to directly supervise and control the work of their employees. A troubling aspect, however, is Vincam's contractual right to hire, fire, discipline and pay the wages. An analysis of this appears below.

As noted earlier, Customs definition of "supervision and control" "generally means the actual power to hire, fire and discipline". *See Position Statement on Relationships Between Customs Brokers, supra.* Of concern is the shifting of this authority from the brokers to Vincam. However, on review this concern is alleviated. You state in your ruling request that "hiring practices are left to the broker client", and explain that Vincam becomes involved in hiring and firing only when the firing or the failure to hire is unlawful. With respect to employee terminations, Paragraph 3 provides that the client company retains the right to reject the assignment of any worker to its worksite by Vincam, provided such rejection does not violate any law. Paragraph 6(A) elaborates on this by stating that the "Client Company acknowledges that Vincam has the right to retain and reassign a Worksite Employee who has been terminated by the Client Company (i.e., a Worksite Employee whose assignment to the Client Company's worksite has been rejected)." Furthermore, paragraph 4(C) provides that the client company will "consult with Vincam before taking any employment action which could be construed as adverse to the employee (e.g., firing, demoting, changing job functions or responsibilities, transferring, etc.)". Although absolute power would no

---

[1] *See, e.g., Central States, Southeast and Southwest Areas Pension Fund v. Central Transport, Inc.*, 85 F.3d 1282 (U.S. Ct. App. 7th Cir. 1996); *Rheem Manufacturing Company v. Central States Southeast and Southwest Areas Pension Fund*, 63 F.3d 703 (U.S. Ct. App. 7th Cir 1995)—Multi-Employer Pension Plan Amendments Act designates employer as person who is contractually obligated to contribute to a pension plan.

longer vest in the broker, in our opinion brokers who use Vincam's services would still have sufficient authority over hiring and firing practices to fall within the definition of "supervision and control".

Thus, while the client companies have relinquished some of their traditional duties as employers, they nevertheless retain the crucial rights to hire and fire and to control the work of their employees. This retention of "operational" functions renders this arrangement acceptable to Customs in terms of the brokers meeting the "responsible supervision and control" requirement.

The employee leasing company arrangement raises other issues beyond license requirements and responsible supervision and control. For example, brokers are required to maintain the confidentiality of client records (19 CFR §111.24), and are prohibited from sharing brokerage fees with an unlicensed person (19 CFR §111.36(a)). You dismiss confidentiality concerns in your ruling request by stating that "Vincam does not have any contact, control or involvement in the business of the firm * * * thus, there are no confidentiality or conflict of interest concerns." On this point we disagree. Paragraph 4(B) of the Agreement permits dissemination of confidential information from the client company to Vincam, with the caveat that such information may not be disclosed to third parties unless such disclosure is required by law. This arrangement does not satisfy the confidentiality requirements of the Customs Regulations, and any disclosure to Vincam of records pertaining to customs business transactions would subject the broker clients to sanctions under Part 111. For this reason, the violative sentences of Paragraph 4(B) would have to be amended or deleted before this arrangement would be acceptable to Customs. This would bring the Agreement into line with the rationale expressed in the Florida Bar opinions you enclosed on the issue of employee leasing firms and law firms. Florida Bar Staff Opinion 18222 states "that so long as the law firm maintains sole control over the legal business of the firm and that the [leasing] company has absolutely no contact, control, or involvement with the law firm's legal practice, there should not be any confidentiality or conflict of interest problems even if the company is providing similar services to other law firms who may be representing adverse parties to the inquirer's firm's clients." In Staff Opinion TEO88015, it was determined that the attorney's obligation of confidentiality would not be compromised if the employee leasing company were denied access to both the identity of the clients of the client company and the files arising from the business transactions with those clients. Furthermore, "security of the law firm's files, premises and affairs would not be changed by virtue of the agreement between the employee leasing company and the law firm." Such measures would have to be in place in a leasing situation involving customs brokers. In practical terms, this means that the employees leased back from Vincam to the brokers will, in the same manner as other employees of the broker who are engaged in customs business activities, have access to client identities and to the files maintained in the customs business operations; however, disclosure of such identities and information to the corporate entity known as Vincam would be prohibited.

On the issue of splitting fees with an unlicensed person, you state that:

> In the co-employment relationship, the fees received by the broker for transacting customs business do not, in any way, inure to Vincam. Vincam charges its clients (broker and non-broker) a flat percentage of the client's payroll. The percentage rate charged is negotiable—there is no set fee for broker clients. Profits achieved by Vincam's clients are not relevant to the fees charged by Vincam to those clients. Similarly, if a client suffers a loss, Vincam will still be paid its negotiated fee. Vincam's clients, broker or otherwise, bill *their* clients directly for the services Vincam's client performs. These charges in no way inure to the benefit of Vincam.

We agree that this arrangement meets the requirements of 19 CFR §111.36(a).

Our determination permitting a broker to retain the services of an employee leasing company, provided the broker client retains responsible supervision and control over its customs business operations, mandates that HRL 113867 be revoked. This is because the contractual agreement between the two parties in HRL 113867 makes it clear that the broker client would maintain control over its day-to-day business operations, while the employee leasing company would take care of the administrative functions. The fact that the employee leasing company does not have a customs broker's license is now immaterial given our conclusion that a leasing company does not have to secure the licenses required of its clients.

As noted earlier, HRL 113867 was also cited as authority in HRL 114267. That ruling was a request for a reconsideration of a response to an internal advice request, HRL 226101,

dated December 4, 1996. One of the issues involved was whether a broker could use the services of an employee leasing company. (The term "employee leasing company" was not used in HRL 226101 to describe the business arrangement; however, it was introduced in HRL 114267 to clarify the situation.) Once again, in HRL's 226101 and 114267, the broker remained in charge of his everyday business operations. Accordingly, we modify the conclusion reached in those two rulings on the issue of employee leasing companies. Finally, we wish to emphasize that the decision to allow brokers to use the services of employee leasing companies in no way affects Customs prohibition on brokers using temporary workers in their customs business operations. The use of temporary workers, or "temps", is an entirely different issue than the use of permanent employees leased back from an employee leasing company. Customs position has been, and continues to be, that a broker would lack the necessary responsible supervision and control over a worker temporarily hired to perform customs business activities.

Holding:

A broker may lease employees from an employee leasing company, provided the arrangement affords the broker adequate responsible supervision and control over the customs business that it transacts on behalf of its clients. Safeguards must be in place to ensure compliance with all other regulations governing brokers, including those requiring a broker to maintain the confidentiality of client records and to avoid sharing fees with unlicensed persons. If all of these factors exist, an employee leasing company may serve as a co-employer with a licensed broker without having to obtain licenses or permits of its own. HRL 113867 is revoked; HRL's 226101 and 114267 are modified to the extent that they conflict with this decision.

JERRY LADERBERG,
Chief,
Entry Procedures and Carriers Branch.

MODIFICATION OF RULING LETTERS AND TREATMENT CONCERNING THE ELIGIBILITY OF FLATWARE SETS FOR A DUTY EXEMPTION PURSUANT TO THE GENERALIZED SYSTEM OF PREFERENCES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letters and treatment relating to the duty-free eligibility of flatware sets under the Generalized System of Preferences ("GSP").

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying two New York Ruling Letters, and any treatment previously accorded by Customs to substantially identical transactions, pertaining to the eligibility of flatware sets for duty-free treatment under GSP. Notice of the proposed modification was published in Vol. 33, No. 29/30 of the CUSTOMS BULLETIN dated July 28, 1999.

EFFECTIVE DATE: This notice is effective for merchandise entered or withdrawn from warehouse for consumption on or after November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Karen S. Greene, Special Classification and Marking Branch, (202) 927–2310.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. 1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed modification of New York Ruling Letters (NY) C88961, dated July 8, 1998, and NY D85020, dated December 11, 1998, was published in Vol. 33 of the CUSTOMS BULLETIN dated July 28, 1999. One comment was received. The commenter disagrees with Customs position that the absence or presence of the "A" (the Special Program indicator for the GSP) in the "Special" subcolumn opposite the subheading under which the flatware set is classified is controlling with regard to eligibility for GSP treatment. Customs position on this issue was clearly set forth in Treasury Decision 91–7, dated January 8, 1991, and we believe that this position is correct. Therefore, it is necessary to modify the cited NY rulings involved, which are inconsistent with this position.

As stated in the proposed modification, this modification covers any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (*i.e.*, ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs is modifying any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States ("HTSUS").

Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or its agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY C88961 and NY D85020, Customs determined, in part, that flatware sets from Thailand classified in subheading 8215.20.0000, HTSUS, are eligible for duty-free treatment under the GSP. Since the issuance of these rulings, Customs has had a chance to review this GSP eligibility issue and has determined that flatware sets classified in the above provision are not GSP eligible articles.

Customs, pursuant to 19 U.S.C. 1625(c)(1), is modifying NY C88961 and NY D85020, and any other ruling not specifically identified, to reflect the proper GSP duty treatment of flatware sets classified in subheading 8215.20.0000, HTSUS, pursuant to the analysis set forth in Headquarters Ruling Letters (HQ) 561315 (see "Attachment A" to this document) and HQ 561440 (see "Attachment B" to this document).

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is modifying any treatment previously accorded by Customs to substantially identical transactions.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

Dated: September 7, 1999.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachments]

[ATTACHMENT A]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 7, 1999.

CLA-02 RR:CR:SM 561315 KSG
Category: Classification

MR. PETER WEINRAUCH
IMPORT COMMODITY GROUP LTD.
Hook Creek Blvd. & 145th Avenue
Bld. A5
Valley Stream, NY 11582

Re: Modification of classification principle set forth in NY C88961; Eligibility under the Generalized System of Preferences of flatware sets classified in subheading 8215.20.0000, HTSUS; sets.

DEAR MR. WEINRAUCH:

This is in regard to New York Ruling Letter (NY) C88961 that was issued to you on July 8, 1998, which addressed the classification of flatware sets. We have reviewed this ruling in

light of a matter currently before us on identical merchandise and have determined that NYC88961 is incorrect with regard to the issue of GSP eligibility. Therefore, this ruling modifies NY C88961 and sets forth the correct duty treatment for the flatware sets.

Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), notice of the proposed modification of NY C88961 was published on July 28, 1999, in the CUSTOMS BULLETIN, Volume 33, No. 29/30. One comment was received in response to this notice.

Facts:

This case involves flatware sets (knives, forks, spoons, and teaspoons with plastic handles) imported from Thailand by Excel Importing Corp. The flatware sets were classified under subheading 8215.20.00/8211.91.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as the knives had the highest rate of duty in the set.

Customs determined that the flatware sets were entitled to duty free treatment under the Generalized System of Preferences ("GSP") upon compliance with all applicable regulations.

Issue:

Whether the imported flatware sets are eligible for duty-free treatment under the GSP.

Law and Analysis:

Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing operations performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. *See* 19 U.S.C. 2463(a).

General Note 3(a)(iii), HTSUS, provides, in pertinent part, as follows:

> The "*Special*" subcolumn reflects rates of duty under one or more special tariff treatment programs described. * * * These rates apply to those products which are properly classified under a provision for which a special rate is indicated and for which all of the legal requirements for eligibility for such program or programs have been met. * * * Where no special rate of duty is provided for a provision, or where the country from which a product otherwise eligible for special treatment was imported is not designated as a beneficiary country under a program appearing with the appropriate provision, the rates of duty in the "General" subcolumn of column 1 shall apply.

Articles from Thailand classified in a provision for which a rate of duty of "Free" appears in the "special" subcolumn followed by the symbol "A" or "A*" are eligible articles for purposes of the GSP. *See* General Note 3(c)(i) and 4(c), HTSUS.

The flatware sets are classified in subheading 8215.20.0000, HTSUS, which provides for "spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: * * * Other sets of assorted articles." The "General" subcolumn states that the applicable duty rate is "[t]he rate of duty applicable to that article in the set subject to the highest rate of duty."

With respect to the eligibility of the sets for GSP treatment, the "Special" subcolumn of subheading 8215.20.00, HTSUS, provides, in pertinent part, as follows: "Free (CA, E, IL, J)." As this provision does not include the symbol "A" or "A*," we have determined that the flatware sets are ineligible for GSP treatment.

In Treasury Decision 91–7, dated January 8, 1991, Customs stated the following regarding the eligibility of sets for special tariff treatment programs:

> If the "Special" subcolumn opposite the subheading under which the set is classified contains a special duty rate, then the entire set would be entitled to that special rate, assuming compliance with the program's legal requirements. * * * However, where no such duty rate is indicated for that subheading, the entire set would be ineligible for the tariff preference program, even though items in the set * * * would be eligible if classified separately.

The flatware sets involved in this case are classified in subheading 8215.20.00, HTSUS. Therefore, it is this provision which is controlling in determining whether the sets are GSP eligible. The fact that the article in the set subject to the highest rate of duty is described in a GSP-eligible provision is irrelevant to a determination of the GSP eligibility of the set. Neither the set nor any individual item in the imported set is "classified" in this provision. The knives in the instant case, for example, would be classified in subheading 8211.91.50, HTSUS (and thus would be eligible for GSP treatment), only if imported separately from

the set. Therefore, we conclude that the flatware sets in this case are ineligible for GSP treatment.

Holding:

The imported flatware sets, which are classified in subheading 8215.20.0000, HTSUS, are ineligible for duty free treatment under the GSP.

NY C88961, dated July 8, 1998, is hereby modified to the extent that it is inconsistent with this ruling. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

[ATTACHMENT B]

DEPARTMENT OF THE TREASURY,
U.S. CUSTOMS SERVICE,
Washington, DC, September 7, 1999.

CLA-02 RR:CR:SM 561440 KSG
Category: Classification

MR. ROBERTO COLON
ELEVEN ELEVEN CORPORATION
P.O. Box 305
Catano, PR 00963-0305

Re: Modification of classification principles set forth in NY D85020; Eligibility under the Generalized System of Preferences of flatware sets classified in subheading 8215.20.0000, HTSUS; sets.

DEAR MR. COLON:

This is in regard to New York Ruling Letter (NY) D85020 that was issued to you on December 11, 1998, which addressed the classification of flatware sets. We have reviewed this ruling in light of a matter currently before us on identical merchandise and have determined that NY D85020 is incorrect with regard to the issue of GSP eligibility. Therefore, this ruling modifies NY D85020 and sets forth the correct duty treatment for the flatware sets.

Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), notice of the proposed modification of NY D85020 was published on July 28, 1999, in the CUSTOMS BULLETIN, Volume 33, No. 29/30. One comment was received in response to this notice.

Facts:

This case involves a three-piece flatware set (knife, fork, and spoon), and a two-piece set (fork and spoon) imported from Thailand. The three-piece flatware set was classified under subheading 8215.20.00/8211.91.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"), as the knife had the highest rate of duty in the set. The two-piece set was classified under subheading 8215.20.00/8215.99.20, as the fork had the highest rate of duty in the set.

Customs determined that the flatware sets were entitled to duty-free treatment under the GSP upon compliance with all applicable regulations.

Issue:

Whether the imported flatware sets are eligible for duty-free treatment under the GSP.

Law and Analysis:

Under the GSP, eligible articles the growth, product or manufacture of a designated beneficiary developing country (BDC) which are imported directly into the customs territory of the U.S. from a BDC may receive duty-free treatment if the sum of (1) the cost or value of materials produced in the BDC, plus (2) the direct costs of the processing opera-

tions performed in the BDC, is equivalent to at least 35 percent of the appraised value of the article at the time of entry into the U.S. *See* 19 U.S.C. 2463(a).

General Note 3(a)(iii), HTSUS, provides, in pertinent part, as follows:

> The "*Special*" subcolumn reflects rates of duty under one or more special tariff treatment programs described. * * * These rates apply to those products which are properly classified under a provision for which a special rate is indicated and for which all of the legal requirements for eligibility for such program or programs have been met. * * * Where no special rate of duty is provided for a provision, or where the country from which a product otherwise eligible for special treatment was imported is not designated as a beneficiary country under a program appearing with the appropriate provision, the rates of duty in the "General" subcolumn of column 1 shall apply.

Articles from Thailand classified in a provision for which a rate of duty of "Free" appears in the "special" subcolumn followed by the symbol "A" or "A*" are eligible articles for purposes of the GSP. *See* General Note 3(c)(i) and 4(c), HTSUS.

The flatware sets are classified in subheading 8215.20.0000, HTSUS, which provides for "spoons, forks, ladles, skimmers, cake-servers, fish-knives, butter-knives, sugar tongs and similar kitchen or tableware; and base metal parts thereof: * * * Other sets of assorted articles." The "General" subcolumn states that the applicable duty rate is "[t]he rate of duty applicable to that article in the set subject to the highest rate of duty."

With respect to the eligibility of the sets for GSP treatment, the "Special" subcolumn of subheading 8215.20.00, HTSUS, provides, in pertinent part, as follows: "Free (CA, E, IL, J)." As this provision does not include the symbol "A" or "A*," we have determined that the flatware sets are ineligible for GSP treatment.

In Treasury Decision 91–7, dated January 8, 1991, Customs stated the following regarding the eligibility of sets for special tariff treatment programs:

> If the "Special" subcolumn opposite the subheading under which the set is classified contains a special duty rate, then the entire set would be entitled to that special rate, assuming compliance with the program's legal requirements. * * * However, where no such duty rate is indicated for that subheading, the entire set would be ineligible for the tariff preference program, even though items in the set * * * would be eligible if classified separately.

The flatware sets involved in this case are classified in subheading 8215.20.00, HTSUS. Therefore, it is this provision which is controlling in determining whether the sets are GSP eligible. The fact that the article in the set subject to the highest rate of duty is described in a GSP-eligible provision is irrelevant to a determination of the GSP eligibility of the set. Neither the set nor any individual item in the imported set is "classified" in this provision. The knives in the three-piece set, for example, would be classified in subheading 8211.91.50, HTSUS (and thus would be eligible for GSP treatment), only if imported separately from the set. Therefore, we conclude that the flatware sets in this case are ineligible for GSP treatment.

Holding:

The imported flatware sets, which are classified in subheading 8215.20.0000, HTSUS, are ineligible for duty free treatment under the GSP.

NY D85020, dated December 11, 1998, is hereby modified to the extent that it is inconsistent with this ruling. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MYLES HARMON,
(for John Durant, Director,
Commercial Rulings Division.)

MODIFICATION OF RULING LETTER AND REVOCATION OF TARIFF TREATMENT RELATING TO TARIFF CLASSIFICATION OF WOMEN'S KNIT SHORTS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of tariff classification ruling letter and revocation of treatment relating to tariff classification of women's knit shorts.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930, as amended, (19 U.S.C. 1625(c)), this notice advises interested parties that Customs is modifying a ruling letter pertaining to the tariff classification of a pair of women's knit shorts under the Harmonized Tariff Schedule of the United States (HTSUS), and revoking any treatment previously accorded by Customs to substantially identical transactions. Comments were requested on the proposed modification in the CUSTOMS BULLETIN of August 4, 1999, Vol. 33, No. 31. No comments were received.

DATE: Merchandise entered or withdrawn from warehouse for consumption on or after November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gail A. Hamill, Textiles Branch, (202) 927–1342.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In NY D82491, dated September 23, 1998, Customs classified a sleeveless knit outerwear top under subheading 6109.10.0070, Harmonized Tariff Schedule of the United States Annotated, HTSUSA, which

provides for women's cotton knit garments other than underwear, T-shirts and tank tops, and a pair of knit shorts under subheading 6114.20.0060, which provides for other knit garments, of cotton.

It is now Customs position that the knit shorts are properly classified under subheading 6104.62.2030, HTSUSA, as women's cotton knit shorts. Heading 6104 covers, *inter alia*, shorts. The provision is an *eo nomine* provision with no legal note defining or limiting the scope of the term shorts. Thus, heading 6104 captures all women's shorts for all uses unless the garment cannot be considered commercially as outerwear shorts. HQ 957133, dated August 14, 1995. Explanatory Note (EN) 6104, by reference to the previous heading, notes that shorts are trousers which do not cover the knee, and that trousers envelop each leg separately. We interpret this guidance to mean that any amount of leg coverage ending above the knee is sufficient to specifically describe a garment as shorts. On the instant shorts, the binding at the leg opening is fashioned as a boy leg and extends about an inch down the leg. For these reasons, we believe the garment is specifically described as shorts in heading 6104.

Customs is modifying NY D82491 and any other ruling not specifically identified, in order to classify this merchandise under subheading 6104.62.2030, HTSUSA. Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. HQ 962356, modifying NY D82491, is set forth as "Attachment" to this document.

As stated in the proposed notice, this modification action will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the im-

porter or its agents for importations subsequent to the effective date of this final decision.

Dated: September 8, 1999.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.)

[Attachment]

[ATTACHMENT]

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE,
Washington, DC, September 8, 1999.
CLA–2 RR:CR:TE 962356 gah
Category: Classification
Tariff No. 6104.62.2030

ALLISON M. BARON
SHARRETS PALEY CARTER & BLAUVELT
67 Broad Street
New York, NY 10004

Re: Modification of NY D82491, classification of women's knit garment.

DEAR MS. BARON:

This is in response to your letter of November 6, 1998, submitted on behalf of S.B.H. Intimates, Inc., requesting reconsideration of NY ruling D82491, dated September 23, 1998, on a women's cotton rib knit upper body garment and a lower body garment. We have reviewed this ruling in light of the original submission, our conference with you on June 3, 1999, and your further submission on July 7, 1999. In your July 7, 1999, submission you withdrew your request for reconsideration of the upper body garment. We determine that NY D82491 is incorrect as to the classification of the knit shorts.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed modification of NY D82491 was published on August 4, 1999, in the CUSTOMS BULLETIN, Volume 33, Number 31.

Facts:

The subject merchandise consists of one boy-leg styled non-underwear garment, style TT04. It is constructed from 100% cotton mid-weight rib knit fabric. The shorts are a pull-on style with a covered elasticized waistband, and inch-wide binding encasing the leg openings. You claim that the lower body garment in question remains properly classified in heading 6108, HTSUSA, as women's underpants. Counsel submits a letter from an intimate apparel buyer that indicates that she intends to market the goods in her store as underwear, and identifies the garment by style number. A print advertisement submitted was for garments not at issue.

Issue:

Is the lower body garment classifiable as women's underwear in 6108? If not, is it classifiable as shorts in heading 6104 or as an other garment in 6114?

Law and Analysis:

Classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI's). GRI 1 requires that classification be determined according to the terms of the headings and any relative section or chapter notes. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

In classifying the lower body garment, consideration of marketing information, and the design and construction details of the garment are instructive in determining whether or not it will be principally used as underwear. *See* Additional U.S. Rule of Interpretation 1(a). The abbreviated length of the garment, nine and one-half inches at the side seam, favors an

underwear classification. The buyer's statement of intent to market the garment as underwear supports such classification as well, but no other marketing information corroborating this intention is supplied.

The weight of the fabric favors an outerwear classification, because it is thick and heavy enough to interfere with the drapability of any outer garment worn over it. The fabric's weight causes the waistband and leg hems to be rather thick in turn. Unlike underpants, there is no crotch gusset and no cotton lining in the crotch. *See* HQ 951205, dated June 16, 1992. The center seam and inseam are not sewn down flat. Rather, they are finished with an overcast seam finish, and the seam allowance is trimmed, all of which would cause irritation if worn next to the skin.

Counsel cites HQ 950503, dated June 19, 1992, for support of the proposition that classification depends on how the importer reasonably expects the garment to be worn. In the instant case, the single statement by a retail buyer as to her expectations is insufficient evidence of principal use.

Without supporting marketing information, the garment itself is the primary evidence of how the garment will be worn. Counsel disputes the notion that the lower body garment would interfere with the drapability of a garment worn over it, and claims that it is designed to have a close fit. Our analysis of the garment at issue is at odds with this statement. The fabric is 100% cotton, but the ribbing detracts from its softness. The garment stretches crosswise, but not lengthwise. There is no elastic in the legs. There is no spandex or nylon to enhance a close fit. The garment would leave a visible bulkiness and a ridge where it ends under any but the loosest fitting clothing. The garment's features indicate that its principal use will be as outerwear. Classification in heading 6108 as underwear fails.

Counsel maintains that even if Customs finds that the garment is not briefs, panties, underpants or similar garments, that it is classifiable in subheading 6108.91.0015, as other cotton underwear. We disagree. A similar analysis would apply to the classification in heading 6108 of any underwear lower body garment.

Heading 6104 covers, *inter alia*, shorts. The provision is an *eo nomine* provision with no legal note defining or limiting the scope of the term shorts. Thus, heading 6104 captures all women's shorts for all uses unless the garment cannot be considered commercially as outerwear shorts. HQ 957133, dated August 14, 1995. The abbreviated length of this garment raises the issue of whether they will be principally worn as outerwear shorts. If not, classification in heading 6114 as an *other garment* would result.

Explanatory Note (EN) 6104, by reference to the previous heading, notes that shorts are trousers which do not cover the knee, and that trousers envelop each leg separately. We interpret this guidance to mean that any amount of leg coverage as long as it ends above the knee is sufficient to specifically describe a garment as shorts. On the instant shorts, the binding at the leg opening is fashioned as a boy leg and extends about an inch down the leg. For these reasons, we believe the garment is specifically described as shorts in heading 6104.

Holding:

The lower body garment is classified in subheading 6104.62.2030, which provides for women's cotton knit shorts, dutiable at 15.8 percent ad valorem and carrying textile category 348.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent negotiations and changes, we suggest that your client check, close to the time of shipment, the *Status Report on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories, your client should contact the local Customs office prior to importing the merchandise to determine the current status of any import restraints or requirements.

NY D82491 dated September 23, 1998, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(for John Durant, Director,
Commercial Rulings Division.

Index

Customs Bulletin and Decisions
Vol. 33, No. 38, September 22, 1999

U.S. Customs Service

General Notices

CUSTOMS RULINGS LETTERS AND TREATMENT

Federal Recycling Program
Printed on Recycled Paper
U.S. G.P.O. 1999–432–394–80051